

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SARASOTA COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 10-4142
)
KARIN EHLERS,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on September 15 and 16, 2010, in Sarasota, Florida, before Administrative Law Judge Elizabeth W. McArthur of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Hunter W. Carroll, Esquire
 Matthews, Eastmoore, Hardy,
 Crauwels & Garcia, P.A.
 1777 Main Street, Suite 500
 Sarasota, Florida 34236

For Respondent: Kevin F. Sanderson, Esquire
 Kevin F. Sanderson, Chartered
 1620 Main Street, Suite 6
 Sarasota, Florida 34236

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner has just cause to terminate Respondent's employment.

PRELIMINARY STATEMENT

By letter dated June 2, 2010, the Superintendent of Schools for Sarasota County, Lori White (Superintendent), notified Respondent Karin Ehlers (Ms. Ehlers or Respondent) that the Superintendent intended to recommend to the Sarasota County School Board (School Board or Petitioner) termination of Respondent's employment for reasons set forth in the letter. The Superintendent's letter advised Ms. Ehlers of her right to request an administrative hearing to contest the proposed termination.

Respondent timely requested an administrative hearing involving disputed issues of material fact. On June 23, 2010, the case was forwarded to the Division of Administrative Hearings for assignment of an Administrative Law Judge to conduct the hearing requested by Respondent. On July 20, 2010, the School Board made the decision to suspend Respondent without pay, effective July 21, 2010, pending the outcome of the administrative hearing.

In accordance with the parties' joint request, the final hearing was set for September 15 and 16, 2010, in Sarasota, Florida, and went forward as scheduled. At the final hearing, Petitioner presented the testimony of Roy Sprinkle, Valeta Clark, Tracey Craft, Leona Collesano,¹ Rita Fletcher, Dee White, Jeannette Pifer, Susie Manning, Douglas Berger, Barbara Brannen,

Maribeth Hamilton, Pamela Newton, Kathleen Mello, and Scott Lempe. Petitioner's Exhibits 1 through 34 were received into evidence by stipulation of the parties. Petitioner also offered into evidence a composite ten-page exhibit as impeachment or rebuttal, which was not admitted, but was proffered.

Respondent testified on her own behalf and also presented the testimony of Lori White, Robert Darois, Rodney Davidson, Emily Gilmore, Don Harrison, Patricia Gardner, Blake Anderson, Oscar Saliba, Mary McCurry, Joan Saari, Janet Meinhart, and Loretta Brustlin. Respondent's Exhibits 51 through 56 were received into evidence by stipulation of the parties.

The four-volume Transcript of the final hearing was filed on October 4, 2010. Both parties timely filed Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is responsible for operating the public schools in the Sarasota County School District (District) and for hiring, firing, and overseeing both instructional employees and non-instructional "educational support" employees.

2. Respondent has been a School Board employee in the Information Technology (IT) department since November 1991. Ms. Ehlers is an "educational support employee" within the meaning of Section 1012.40, Florida Statutes (2009);² and for

purposes of collective bargaining unit categorization, she is a "classified," as opposed to an "instructional," employee.

3. Until the summer of 2009, Ms. Ehlers was a COBOL programmer. Due to budget cuts and advancing technology that rendered COBOL programming outdated, the positions of Ms. Ehlers and other COBOL programmers were targeted for elimination as of June 30, 2009, as part of a "staffing" process to reduce the District's workforce.

4. The requirements for implementing workforce reductions are set forth in the Collective Bargaining Agreement (CBA) between the School Board and the union, Sarasota Classified/Teachers Association (union). In accordance with the CBA's terms, Ms. Ehlers was permitted to displace or "bump" another employee in the IT department, in the state reports coordinator position. Respondent assumed the state reports coordinator position, reporting directly to Barbara Brannen, who is the manager of Data Analysis and Recording for the District.

5. Ms. Brannen manages a small unit with tremendous responsibility. With the assistance of four employees, including the state reports coordinator, Ms. Brannon is responsible for reporting all of the District's student and staff data in reports called "surveys" to the state and federal governments. The survey data submitted to the state Department of Education serves as the predicate for roughly 78 percent of

the District's funding. Errors in these surveys can be very costly: under-reporting data means receiving less funding than the District is entitled to; and over-reporting data means overpayments discovered in audits, subjecting the District to penalties. The data is also used to determine compliance with state and federal regulations, such as the federal "No Child Left Behind" program. The data also serves to inform decision-makers at the state level for legislation and other policymaking and at the District level for staffing and resource allocation.

6. Ms. Brannen has earned a reputation as an exacting task-master who sets very high standards for herself and the employees she supervises. Ms. Brannen can be intense and demanding, with little tolerance for mistakes. The work is stressful, but the high standards are necessary because the stakes are so high.

7. Respondent's brief time in the state reports coordinator position was tumultuous, with nothing but discord and negativity, as explained in more detail below. Respondent's conduct during this period of less than one year, considered in the context of Respondent's employment history with the School Board, led the Superintendent to notify Ms. Ehlers by letter dated June 2, 2010, that the Superintendent intended to recommend to the School Board that Respondent's employment be terminated.

8. The Superintendent's letter summarized the four separate, but related, categories of conduct that served as the bases for recommending termination, as follows:

- Respondent had created a hostile work environment within the IT department by such behavior as yelling, making threatening comments, acting in ways perceived as threatening, slamming doors, listening in on others' conversations, and following others in a stalking-type manner;
- Respondent violated a November 2009 mediation agreement that she entered into with her supervisor, Ms. Brannen, which had been attempted in lieu of discipline to address the discord;
- Respondent was insubordinate at a "Weingarten" meeting held on April 13, 2010, during which she yelled at her department director and called the department director a liar; and
- Respondent failed to comply with her department director's request to meet on April 15, 2010.

The Superintendent concluded that in each instance, Respondent was insubordinate and in violation of the Code of Professional Conduct of the Non-Instructional Support Staff Employed by the School Board (Code of Professional Conduct), warranting disciplinary action. Collectively, the conduct constituted a flagrant violation, providing sufficient cause to recommend termination.

9. "Just cause" is the standard required by the CBA for all disciplinary actions against non-instructional personnel such as Respondent. Normally, the following progressive disciplinary steps are administered: (1) verbal reprimand;

(2) written reprimand; (3) suspension; and (4) termination. However, progressive discipline is not required in instances of flagrant violation.

10. In addition to the formal disciplinary steps recognized by the CBA, administrators may opt for informal steps to address concerns before resorting to formal discipline. These steps, intended to clarify expectations, may include informal counseling and issuance of Memoranda or Letters of Instruction. Although these informal steps are non-punitive themselves, the failure to abide by the clarified expectations may warrant discipline.

11. School Board administrators also occasionally use mediation as a tool to address concerns instead of immediately jumping to discipline. If a mediation agreement is reached as a result of this process and sets forth agreed conduct, violations of that agreement can warrant discipline.

12. Respondent's employment history includes the following informal non-disciplinary steps taken to call to Respondent's attention concerns with her behavior:

- November 14, 2001, Memorandum of Instruction, concerning Respondent's conduct, which was described as disrespectful, unprofessional, argumentative, condescending, and uncivil.
- November 26, 2001, Memorandum of Instruction, regarding Respondent's inappropriate, disruptive, and disrespectful behavior towards her co-workers and supervisor. Respondent was reminded that if

she thought issues needed to be addressed, she had to use proper channels, professional methods, and appropriate behavior.

- February 9, 2009, Memorandum of Instruction, directing Respondent to comply with the Code of Ethics.
- November 16, 2009, Letter of Instruction, emphasizing the importance of properly completing timecards and blue sheets used to request time off.
- November 2009 mediation process, resulting in a Mediation Agreement signed on November 25, 2009, by Respondent and Barbara Brannen, undertaken in lieu of discipline.

12. Respondent's prior formal disciplinary history includes a September 17, 2002, verbal reprimand for insubordination, following two attempts to clarify expectations via Memoranda of Instruction issued in November 2001.

Respondent's Change to State Reports Coordination

13. In early 2009, a budget shortfall was identified for the upcoming fiscal year that would begin on July 1, 2009. This started a staffing process in accordance with the CBA's requirements to plan for the necessary reduction in the District's workforce. Administration attempted to minimize the impact of budget reductions on the classroom. Administration also decided to give potentially affected employees as much advance notice as possible under the circumstances. That way, the employees could consider their options, including whether

they would be in a position to take advantage of the CBA's bumping process.

14. The CBA sets forth a detailed process that, in general terms, permits an employee whose position is eliminated to displace, or bump, a less senior employee in the same department, who holds a position for which the more senior employee is qualified. The newly displaced employee is then permitted to use the same process to bump a less senior employee, and so on. The bumping process is fairly mechanical and is monitored by a number of persons within the administration and the union to ensure that the CBA's rules are followed.

15. On February 4, 2009, Leona Collesano, the director of the IT department, and Robert Darois, Respondent's immediate supervisor, notified Respondent that her COBOL programming position had been targeted for potential elimination as of June 30, 2009.

16. The next day, February 5, 2009, Respondent called Tracey Craft, an IT employee, to announce to Ms. Craft in an unfriendly manner that Respondent intended to take her position. Ms. Craft was upset and complained to her supervisor, Ms. Collesano. After consulting with Human Resources, Ms. Collesano spoke with Respondent and told her to not tell any other employees that Respondent was going to take their

position. Respondent admitted making the phone call, but said that she placed the call from her cell phone on her lunch hour, as if to suggest that she was free to harass other employees with threats of taking their jobs as long she was physically away from the workplace.

17. That same day, after Ms. Collesano admonished Respondent to stop telling other employees she was going to be displacing them, Respondent sent an email to the Superintendent, all members of the School Board, the union president, and others. Respondent's email complained that she was "being harassed by" Ms. Collesano and stated that "I can talk to anyone I want when I am not at work or the job site." The next day, February 6, 2009, Respondent emailed Robert Hanson, then head of the IT department and Ms. Collesano's supervisor. Respondent stated that "Leona harassed me and her behavior was VERY unprofessional. She was very nasty." Respondent requested that "a formal complaint be filed" and said that she wanted "a response in 3 to 5 days."

18. The record is replete with this behavior pattern by Respondent--whenever someone criticized or found fault with Respondent, she reacted very defensively, turning the situation around to blame or file a complaint against the person who criticized her. In this way, Respondent attempted to deflect the focus away from her own behavior.

19. On February 9, 2009, Ms. Collesano and Mr. Darois met with Respondent to provide her a Memorandum of Instruction that emphasized Respondent's obligation to abide by the Code of Ethics. During the meeting, Respondent slammed her hand on the table, called Ms. Collesano a "liar," asked whether Ms. Collesano had ever managed, said that the "place is like a kindergarten," and accused Ms. Collesano of having "it out for me since you came here."³ For many days after that meeting, Respondent would walk past Ms. Collesano's office frequently (such as four times in 30 minutes), peer in, read what Ms. Collesano had written on her white board, and make "tssk" sounds.

20. On February 24, 2009, Respondent filed an equity complaint against Ms. Collesano alleging discrimination based on "sexual orientation." The substance of Respondent's complaint was that Ms. Collesano was "mean," that she ran her department "like a kindergarten," that she used "her position negligently like a police officer with too much authority," that she was "VERY unprofessional," and that she had once asked Respondent about her dating life. Administration immediately conducted an investigation into Respondent's complaint, but found it to be without merit.

21. Also on about February 24, 2009, Respondent confronted Tracey Craft at the Corkscrew Deli, a restaurant within walking

distance of the Landings (the School Board administration's main office complex), where they both worked. Respondent yelled at Ms. Craft, "Liar!" Presumably this was because Ms. Craft had complained about Respondent's phone call threatening to take Ms. Craft's job. Although Respondent denied this incident occurred, both Ms. Craft and another eyewitness, Susie Manning, confirmed that it occurred as described, and their testimony is found to be more credible than Respondent's denial.

22. During the spring of 2009, Respondent went to work identifying and making the case for her qualifications for other positions in the IT department. She identified four positions that she believed she qualified for and had more seniority than the person then in the position. Two of the positions, District data support coordinator and state reports coordinator, would result in a small pay reduction for Respondent, while the other two positions would result in a significant pay reduction. Despite Respondent's belief that she qualified for the District data support coordinator job, it was determined that Respondent did not meet the minimum qualifications for that position. At that point, Respondent targeted the state reports coordinator position, which had been held by Valeta Clark for three years.

23. Ms. Brannen, the direct supervisor of the state reports coordinator, and Ms. Collesano, Ms. Brannen's supervisor as the IT department director, both contended to the Human

Resources department that Respondent did not meet the minimum qualifications for the position. The Superintendent also expressed her reservations about whether Respondent's skill set was adequate, but determined that if Human Resources concluded that Respondent met the minimum qualifications for the position, the Superintendent would agree with that determination.

24. Respondent actively sought to qualify herself for the position of state reports coordinator. She wrote emails and memos, had meetings, took tests, and otherwise pursued the position. Respondent claimed to Human Resources personnel that "I can do the job better than anyone that has been in that position before." Ultimately, the Human Resources department concluded that Respondent met the minimum qualifications for the position. Accordingly, Respondent displaced Ms. Clark as state reports coordinator.

Respondent's Campaign Against Ms. Brannen

25. Before Ms. Ehlers assumed the state reports coordinator position, she had never been supervised by Ms. Brannen. In fact, except for a six-month project they worked on together in 1996 or 1997, Respondent and Ms. Brannen had little to no interaction. They worked on different sides of different floors of what was called the "green awning building" in the Landings office complex, with Ms. Ehlers working with the

COBOL programmers on the south side of the second floor, while Ms. Brannen's unit was on the north side of the first floor.

26. Even while Ms. Ehlers was actively campaigning to take the state reports coordinator job, she began an equally vigorous campaign against Ms. Brannen. Ms. Ehlers would tell virtually anyone who would listen to her that Ms. Brannen was horrible to work for and that Ms. Ehlers would not tolerate any abuse from Ms. Brannen. Respondent made a point of telling this to fellow employees, to individuals she hardly knew, to the union, to the Human Resources department, and others. Respondent made it known that she was poised to file complaints against Ms. Brannen, and she threatened to wire herself with a tape recorder to record every interaction with Ms. Brannen.

27. For example, when Ms. Ehlers was still a programmer, she worked on the opposite side of a cubicle wall from Jeanette Pifer. Ms. Pifer testified that Ms. Ehlers constantly made derogatory statements about Ms. Brannen, announcing to Ms. Pifer that "she wasn't going to put up with Barbara's crap" and that "Barbara was a bad person to work for." Respondent's derogatory comments did not always stop with Ms. Brannen, but sometimes continued up the chain of command. Respondent made a highly insulting comment about Ms. Collesano and Ms. Collesano's daughter to Ms. Pifer, stating that Ms. Collesano's daughter probably was as big a slut as her mother. Respondent also told

Ms. Pifer that someone should "blow up" Robert Hanson's car. At the time, Robert Hanson was head of the IT department and was Ms. Collesano's supervisor. Ms. Pifer's testimony was credible and is accepted.

28. On May 26, 2009, Respondent sent the following email to several persons in the IT department, Human Resources, and the union regarding her upcoming position working for Ms. Brannen:

My placement has sure sparked comments from the vast majority of my department, employees in the school district outside my department, and the general public. I know this is a small town but this is getting ridiculous. I have received phone calls at my home, people have approached me outside of work and on the job about my placement working for Barbara Brannen. People have expressed their condolences, rolled their eyes, made snide remarks about Barbara and people in the general public have heard about others that have worked for her and worry for me. I know Barbara's history and so do a lot of other people. It's no secret. I hear negative comments daily from administrators and employees on my floor. I hear people complaining about having to be in meetings with Barbara and noone [sic] wants to be around her. Several employees/administrators have told me or insinuated that Barbara can't stand me and will find a way to fire me. This has created more concern and anxiety for me.

29. Robert Hanson responded to Ms. Ehlers that this "message is over the top in negativity, cynicism, and hearsay." He advised Ms. Ehlers to focus on her performance and "learn

this new set of skills," and if she did so, she would have no issues with Ms. Brannen or her superiors. Ms. Ehlers replied that she was going into the new position with a very positive attitude, but could not resist adding that "Barbara is very capable of destroying my best intentions. I can not [sic] help the comments that have been made to me by others, but I have heard them for years. I am very aware of Barbara's history and will not tolerate what others have."

30. The more credible evidence establishes that despite Respondent's attempt to suggest she had a positive attitude (while adding more negative remarks), Ms. Ehlers went into the state reports coordinator position with a very negative attitude. Respondent's focus was squarely on finding reasons to complain about Ms. Brannen, instead of on learning and mastering the new skills and new procedures necessary to become effective in her new position.

Respondent Assumes New Position and
Continues Campaign Against Ms. Brannen

31. Due to the critical importance of the state reports coordinator position to the District and concerns about Ms. Ehlers' skills to carry out her new duties, Ms. Brannen asked her supervisor, Ms. Collesano, to release Ms. Ehlers a full month early from her programming position, while Ms. Clark was still in the state reports coordinator position. That way,

Ms. Clark, who had performed very capably in her position, could train Ms. Ehlers. For this sort of transition in the District, while some overlap for training purposes is attempted, an overlap with two employees in the same position for as long as one month is uncommon. Nonetheless, Ms. Collesano authorized the lengthy overlap to help Respondent learn her new position. Respondent was asked to report to Ms. Brannen on June 3, 2009, instead of July 1, 2009.

32. On June 3, 2009, Respondent began training with Ms. Clark to be the state reports coordinator. While Respondent characterized this period as difficult, accusing Ms. Clark of being jealous of her and mad that Respondent bumped her out of the position, the more credible evidence established that Ms. Clark handled herself professionally and worked hard to train Respondent. Ms. Clark provided Respondent with a great deal of information, including notebooks she put together with instructions and samples showing how to set up responses to surveys, to enable Respondent to succeed in the position.

33. During the training period, Respondent made numerous negative comments to Ms. Clark about Ms. Brannen similar to the comments described above that Respondent made to Ms. Pifer. Respondent also told Ms. Clark that Ms. Collesano and Mr. Hanson were "liars" and "can't be trusted."

34. Ms. Clark credibly testified that Respondent told Ms. Clark that she was able to convince Mike Jones and Roy Sprinkle in the Human Resources department that she was qualified for the state reports coordinator position and that Respondent could talk them into anything where computers were concerned, because anything to do with computers went over their heads. As Respondent said this, she gestured with her hand passing over the top of her head to illustrate the comment.

35. Respondent made a lot of mistakes during her training period, and she did not receive constructive criticism well. When Ms. Clark or Ms. Brannen pointed out Respondent's errors, Respondent became very defensive, saying that she was human and it could not be helped. When either Ms. Clark or Ms. Brannen attempted to explain what was at stake and how the errors could affect the District, Respondent reacted abruptly and loudly, with statements such as "You don't need to tell me that"; "I'm an adult"; or "You don't need to tell me, I know."

36. Ultimately, on June 25, 2009, Ms. Clark submitted a written complaint to Ms. Brannen concerning Respondent's bad behavior and performance issues and left the complaint on Ms. Brannen's desk. The complaint disappeared, but Respondent confronted Ms. Clark later that day suggesting that she at least saw and read the complaint, if she did not actually cause it to disappear. According to Ms. Clark's credible testimony,

Respondent physically confronted Ms. Clark in the women's bathroom, gesturing angrily at Ms. Clark and accusing her of being a "backstabber." This confrontation caused Ms. Clark to fear for her safety. She went to Ms. Collesano, visibly upset and nearly in tears, and requested that she be relieved of her position and the overlap training immediately. Ms. Collesano granted her request, cutting Respondent's training short by about three work days.

37. Ms. Ehlers denies confronting Ms. Clark, and there were no eyewitnesses in the bathroom. However, Ms. Ehlers sent an email that same day to Ms. Collesano, stating that an (unnamed) employee approached Ms. Ehlers "and said that Valeta [Clark] is back stabbing me. She is making up stories that I have said things about Barbara Valeta is very jealous that I am taking her position from her." Ms. Ehlers then proceeded to accuse Ms. Clark of taking an extended lunch without reporting it on her time card, which Respondent characterized as "insubordinate." This email, in which Respondent used the same "backstabber" terminology as Ms. Clark said that Respondent used when she confronted Ms. Clark in the bathroom, adds credence to Ms. Clark's version of this incident. In addition, several witnesses confirmed seeing Ms. Clark visibly shaken shortly after this incident occurred.

38. While at times Ms. Ehlers would insist that Ms. Clark was "jealous" that Ms. Ehlers was taking her position, at other times Respondent would include Ms. Clark in the class of "everybody" who knew that Ms. Brannen was impossible to work for, as well as the class of "nobody" who could stand working for Ms. Brannen. Neither extreme of these inconsistent positions is supported by the more credible evidence. Instead, the evidence showed that Ms. Clark did well in the state reports coordinator position and worked well over a three-year period under the supervision of Ms. Brannen. At the same time, Ms. Clark was professional about the bumping process, assisted with the transition as much as possible, considering the lack of a receptive trainee, and took advantage of the opportunities presented to her in other positions to which she was permitted to move.

39. Ms. Clark was not the only recipient of Ms. Ehlers' negative comments about Ms. Brannen during the June 2009 transition-training period. Diane Biddle, a District employee in a completely different department, complained to Ms. Collesano that Respondent had approached Ms. Biddle in late June 2009, in a public area in Ms. Biddle's department, and made negative comments about Ms. Brannen in a loud voice so that others could hear. Specifically, Respondent came over to Ms. Biddle's area to deliver some data changes and told

Ms. Biddle that she was Valeta Clark's replacement. Respondent volunteered to Ms. Biddle that Respondent could handle the work, but was not going to take the abuse from Ms. Brannen.

Respondent continued loudly that she was going to file grievances against Ms. Brannen and complain to Human Resources and that she had already warned the Human Resources department and the union that she was not taking Ms. Brannen's abuse.

40. When asked about these comments made to Ms. Biddle, Respondent said that she did not know who Diane Biddle was. That response adds credence to the record evidence tending to suggest that Respondent widely disseminated her negative comments about Ms. Brannen, with no regard to whether sharing her negative views with someone she knew or whether she made her comments in a way and in a setting where others could easily overhear.

41. In July and August 2009, Ms. Brannen took up where Ms. Clark had left off and attempted to work with and train Respondent. By late August, Ms. Brannen called a formal meeting with Respondent to discuss the issues because Respondent continued to exhibit a negative and defensive attitude toward Ms. Brannen, toward training, and toward attempts to correct Respondent's mistakes. That effort did not help, and the friction continued through September.

42. Respondent continued to go out of her way to initiate negative comments about Ms. Brannen in all kinds of settings, even to people who were complete strangers to her. For example, at a 2009 back-to-school event at Sarasota Middle School where Respondent's daughter attended school, Respondent approached someone she had never met before and spontaneously told this person how horrible Ms. Brannen was. It turns out that the person she approached, Maribeth Hamilton, was the school's registrar, who regularly had to deal with Ms. Brannen's unit (now including Respondent).

New Audience for Respondent's Complaints

43. On October 6, 2009, Scott Lempe, the District's chief operating officer,⁴ assumed supervisory oversight of the IT department from Mr. Hanson, who had resigned. Thus, Mr. Lempe became Ms. Collesano's immediate supervisor. Before this time, Mr. Lempe had never been in the supervisory line of authority over Respondent, Ms. Brannen, or Ms. Collesano.

44. By October 8, 2009, just two days after Mr. Lempe took over as head of the IT department, Respondent was in Mr. Lempe's office. During that meeting, Respondent complained about Ms. Brannen. Mr. Lempe told Respondent that he would look into her complaints. According to Respondent, Mr. Lempe told her to send him emails for a two-week period to update him.

45. Respondent reacted by showering Mr. Lempe with numerous email complaints about Ms. Brannen on behalf of herself; at least as often, Respondent's emails would raise complaints about Ms. Brannen on behalf of others and complaints vaguely on behalf of "people" (i.e., "People are fed up").

46. Although Respondent testified that Mr. Lempe asked for email reports for two weeks, Respondent acknowledged that she continued to send numerous complaint emails to Mr. Lempe after that two-week period. Finally, on October 27, 2009, Mr. Lempe responded to yet another email from Respondent by stating that he understood her concerns, "and I want these emails to stop."

47. The emails did not stop. After several more email complaints, Mr. Lempe wrote a second time to Respondent on October 29, 2009, with the following directive: "I asked you to stop this, and remain professional for the time being. I don't want to get another email from you about this."

48. Still, the emails continued. In just one of several emails sent on November 4, 2009, Respondent complained: "Barbara works against everybody. Barbara does not work as a team. Barbara doesn't like it that I took Valeta away from her. Valeta is thrilled to be out of here just like everyone else."

49. After two ignored directives, Mr. Lempe called a "Weingarten meeting" to address Respondent's conduct through November 4, 2009, in continuing to send email complaints to

Mr. Lempe. A Weingarten meeting is a fact-finding meeting with discipline as a potential outcome. For that reason, an employee's union representative is invited to attend.

50. Present at the November 6, 2009, Weingarten meeting was Mr. Lempe; his assistant, Rita Fletcher, to take minutes; Respondent; and Dee White, Respondent's union representative. At the conclusion of the meeting, Mr. Lempe chose not to discipline Respondent for her insubordination. Instead, Mr. Lempe requested that Respondent participate in mediation with Ms. Brannen in an effort to resolve the problems that Respondent had working for Ms. Brannen. Mr. Lempe requested that Doug Berger conduct the mediation, and he did not require any specific resolution. Mr. Berger is a certified mediator who was a District employee at that time. Mr. Berger generally did not know Respondent or Ms. Brannen, although he had previously taught a course taken by Respondent (see Endnote 3).

51. Respondent's union representative commented favorably about Mr. Lempe's suggestion for mediation, noting that mediation is not suggested by many administrators. She thought mediation was a good idea "instead of automatically hitting somebody with a disciplinary action" and that Mr. Berger was a "really good professional" to facilitate the effort.

52. Respondent and Ms. Brannen participated in numerous mediation sessions in November 2009, meeting both separately and

jointly with Mr. Berger. Mr. Berger described this process as sometimes difficult and emotional, although he characterized Ms. Brannen as keeping her cool and acting professionally throughout the process, while he described Respondent as often emotional. Ultimately a mediation agreement was drafted and finalized, and both Respondent and Ms. Brannen voluntarily signed the final mediation agreement on November 25, 2009.

53. The mediation agreement included the following terms in pertinent part:

- Respondent and Ms. Brannen will call inappropriate behavior as it occurs (communicating with each other instead of complaining about the behavior to third parties);
- Respondent will redirect legitimate complaints and concerns from others to Ms. Brannen for resolution (instead of making complaints or voicing concerns attributed to others on their behalf);
- Respondent will not participate in office gossip with other employees regarding Ms. Brannen, but instead will address issues directly with Ms. Brannen;
- If there are issues that cannot be resolved between the two of them, proper procedures will be followed to address and resolve the issues, including utilizing the mediation process again as necessary;
- Due to the nature of their work, Ms. Brannen will insist on accuracy and meeting deadlines. Ms. Brannen will provide feedback to Respondent in a constructive manner regarding her performance.

54. Respondent did not abide by the mediation agreement. Instead, Respondent continued to engage in the same problematic

conduct that she had agreed to stop or change when she signed the agreement.

55. As one example, Respondent continued to tell Ms. Brannen vaguely and generally that "registrars" were confused by instructions, but that they were afraid to go to Ms. Brannen with questions and instead were calling Respondent to express their concerns and fears. Ms. Brannen would remind Respondent that she had agreed to pass on these types of complaints and concerns to Ms. Brannen so she could address them when they happened. Once, when pressed for names of "registrars" who had "called," Respondent started back-pedaling, and after much dancing around, Respondent ultimately admitted that there was only one registrar who had not called, but sent an email and that email had been forwarded to Ms. Brannen. Ms. Brannen had immediately contacted that registrar, and it turned out there was no confusion, fear, or concerns at all; the registrar was simply confirming the instructions.

56. Respondent also continued to engage in office gossip about Ms. Brannen and complain about Ms. Brannen to others, including Oscar Saliba, a fellow former COBOL programmer, and Mr. Berger, the mediator.

57. Respondent refused to acknowledge that she ever violated the mediation agreement, continuing to insist at the final hearing that she did not violate the agreement. However,

Respondent acknowledged that she was obligated by the agreement she signed to bring up problems directly with Ms. Brannen when they occurred. Respondent admitted that she did not do that. Respondent claimed it would do no good to comply with the mediation agreement because "I never got any results, anyway." But Respondent never asked to reopen the mediation agreement. Instead, just as before, she took her issues to co-workers or anyone else who would listen to her complain about Ms. Brannen.

January 2010 Performance Evaluation and Resulting Complaints

58. On January 19, 2010, Ms. Brannen met with Respondent to discuss Ms. Brannen's performance evaluation of Respondent. The evaluation was not good. In many categories, Respondent's work performance as state reports coordinator was found to be ineffective, and in other areas, Respondent was found to need improvement. Attached to the performance evaluation were 26 pages of detailed comments and documentation on each category evaluated, explaining the reasons for finding Respondent's performance ineffective or needing improvement. In sum, Ms. Brannen provided substantial performance-based justifications for each evaluation level given.

59. Some of the basic performance problems trace back to the original concern regarding whether Ms. Ehlers had the skill set for this position. Although Ms. Ehlers plainly touted her skills and ability to carry out the responsibilities of state

reports coordinator "better than anyone else," a review of the job description used to determine her qualifications shows that in some pretty obvious areas, her skills were lacking. As one example, the job description starts with the following statement under the heading "Knowledge, Skills and Abilities: Above average knowledge of PC applications such as MS Word and Excel." Ms. Ehlers did not have "above average knowledge" of these applications. She admitted as much in her meeting with Ms. Brannen in late August 2009, characterizing her own knowledge of both Word and Excel as only "Basic." She trained enough to pass a test to qualify for the job and believed that whether or not she retained the knowledge was not an issue.

60. The January 2010 evaluation shows why above-average skills--beyond basic and certainly beyond "knew at one point but forgot"--were necessary. As just one example, one of several mistakes Respondent made in an FTE Audit Documentation report, turned in for distribution to executive staff, was described as follows:

School Missing from FTE Totals.

After adding a new school, Karin did not adjust the Excel table to include the school properly. Finding amounts for that school were not properly reflected in the findings totals, resulting in a misstatement of FTE finding amounts.

61. In the evaluation categories of Personal Relationship (employee's tact, courtesy, self-control, patience and respect for others) and Acceptance of Constructive Criticism,

Ms. Brannen's comments were as follows:

There have been multiple instances where Karin has become upset, lost control, and left the job. We have recently established a mediation agreement that we hope will resolve this issue.

When things go wrong, Karin has a tendency to try to assign blame, rather than focusing on what needs to be done to correct the problem.

I have spoken to Karin about this. No one is in a position to evaluate the performance of any employee who is not a direct report. It is inappropriate, and unproductive. Karin is working on this and I have seen some improvement.

Karin tends to become combative when she feels her performance is questioned. She has acknowledged that she does not take correction well, and we are working on that. I have noted improvement over the last two weeks.

62. The record amply demonstrates the credibility and fairness of these statements. As will be pointed out below, the critiques echo similar statements made by every other supervisor Respondent worked for at the School Board.

63. Unfortunately, the brief improvement noted in Respondent's behavior came to an abrupt halt with the issuance of this evaluation, which came with a recommendation by

Ms. Brannen and Ms. Collesano that Ms. Ehlers be placed on the "notification, evaluation, assistance and time" (NEAT) process. The NEAT process is a performance improvement plan designed to provide greater assistance to employees who need help to succeed in their positions. For classified employees, such as Respondent, who are placed in the NEAT process, more times than not, the employee successfully completes the plan, and the result is that the employee is retained in the position. But termination is a possible outcome, if an employee does not successfully complete the NEAT process.

64. Respondent could have accepted the critiques and dug in to learn or re-learn the skills needed for her new position. Instead, she fell back into a defensive, combative response mode, starting by refusing to sign the evaluation, even though the form makes clear that the employee's signature "does not necessarily indicate agreement." On the morning of February 4, 2010, Respondent finally signed her performance evaluation after her union representative advised her to sign it.

65. Later that morning, after signing her negative performance evaluation, Respondent went to the clerk of the Circuit Court and filed a "Petition for Injunction for Protection Against Repeat Violence" against Ms. Brannen. The Circuit Court denied the petition that same day, finding that "the petition does not set forth facts which warrant the

issuance of an injunction." The Circuit Court added the following note: "Injunctions for Protection are not intended to resolve work place disputes."

The Hostile Work Environment Complaint

66. The day after her injunction petition was denied, Respondent filed a Hostile Work Environment Complaint, supplemented on February 8, 2010, naming Ms. Brannen as the one who created the hostile environment.

67. Mr. Lempe accepted Respondent's complaint immediately and took it very seriously. He requested that Mr. Jones and Mr. Sprinkle from the Human Resources department assist him with the investigation. Mr. Lempe chose to bring in the Human Resources staff, because they were outside of the IT department and had substantial experience in conducting investigations.

68. Mr. Sprinkle interviewed Respondent twice, at Respondent's request, and he interviewed Ms. Brannen once. Mr. Sprinkle also interviewed 35 other individuals whom Respondent identified as having information regarding her claim of a hostile work environment. Mr. Sprinkle interviewed every District employee identified by Respondent and as many former District employees who agreed to be interviewed. The investigation was comprehensive and thorough.⁵

April 13, 2010, Weingarten Meeting

69. While the Hostile Work Environment investigation was ongoing, Ms. Collesano proceeded with a Weingarten meeting to address Respondent's conduct through March 2010 that was contrary to the terms of the mediation agreement. After being rescheduled at Respondent's request, the meeting was held on April 13, 2010.

70. Present at the meeting were Ms. Collesano; Respondent; Respondent's union representative, Dee White; and Ms. Fletcher to keep the minutes. During the meeting, Ms. Collesano shared with Respondent a series of emails that Respondent wrote. Instead of addressing the emails and responding to questions, Respondent became very agitated and kept veering off-topic to make accusations against others. Respondent yelled at Ms. Collesano, her department director. Respondent denies this, but every other person in the room, including Respondent's union representative, testified that Respondent yelled at Ms. Collesano. Their consistent testimony is credible; Respondent's denial of what everyone else in the room agreed happened is not credible.

71. Twice during this meeting, Respondent was interrupted by her union representative to advise Respondent to stop, that Respondent was digging herself in a hole, and that Respondent was being very unprofessional. Respondent, however, did not

stop. Instead, she accused Ms. Collesano of lying. Again, Respondent denies that she accused Ms. Collesano of lying. But Respondent did admit that she accused Ms. Collesano of "not being truthful" and that there was no difference between "not being truthful" and "lying." Once again, other witnesses in the room recalled quite clearly that Ms. Ehlers called Ms. Collesano a liar. The greater weight of credible evidence supports a finding that Ms. Ehlers did, in fact, call Ms. Collesano a liar, without any apparent basis at the April 13, 2010, Weingarten meeting. Respondent's verbal attack against her department director cannot be justified as legitimate or reasonable behavior for a subordinate. Respondent was insubordinate.

72. Ultimately, Respondent's union representative stopped the meeting. Respondent was emotional and followed her union representative out of the building and into the parking lot. The union representative told Respondent to go back inside the building, go back to work, and not to follow her.

April 15, 2010, Refusal to Meet

73. Soon after the April 13 Weingarten meeting, Ms. Collesano reported to Mr. Lempe that she was growing increasingly concerned about her safety. Ms. Collesano also reported that others in the IT department also feared for their safety around Respondent. That report was ultimately confirmed to Mr. Lempe by several of Respondent's co-employees.

74. Mr. Lempe elected to exercise a right available to him under the CBA to require Respondent to submit to a fitness-for-duty psychiatric evaluation before returning to work. A letter was prepared notifying Respondent of this requirement, and Mr. Lempe intended to meet with Respondent at the end of her work day on April 15, 2010, to deliver the letter to her.

75. At approximately 4:15 p.m., on April 15, 2010, Mr. Lempe was on his way to the green awning building, less than two minutes away. Ms. Collesano met Mr. Jones of Human Resources in the lobby, and they waited for Respondent. As Respondent approached, Ms. Collesano asked her to stop to meet with her and Mr. Jones for just a few minutes. Respondent did not stop or break stride, but kept walking right past Ms. Collesano and Mr. Jones, saying that she had to leave to pick up her kids.

76. Shortly after leaving the building, Respondent called Pam Newton, the receptionist who was in the lobby and who witnessed Respondent's exit. Respondent told Ms. Newton that the reason she did not stop was that Respondent thought she was about to be fired because she "blew up" and "lost it" at the Weingarten meeting two days earlier. Respondent told Ms. Newton that her union representative, Dee White, was mad at her, too, and thought Respondent's behavior could result in her getting fired. Respondent denies this telephone call. However,

Ms. Newton's testimony was credible and corroborated by her written note of the incident shortly after it occurred. While Respondent testified that she had arranged to leave early at 4:15 p.m., to pick up her children, her conduct and her admission to Ms. Newton suggest a different reason for not stopping, even for a minute or two, for the brief meeting requested by her department director.

77. According to Respondent's testimony, Mr. Jones and Ms. Collesano told her to come see them first thing the next morning, which would have been Friday, April 16, 2010. Respondent did not do so; she called in sick. It was not until Monday, April 19, 2010, that administration was able to deliver the letter to Respondent requiring an evaluation before returning to work.

78. The next day, on April 20, 2010, Respondent filed two reports with law enforcement alleging that Ms. Brannen had committed two batteries on Respondent, one in October and one in November 2009. These same incidents were the basis for Respondent's prior petition for injunction against Ms. Brannen, which was denied. One allegation was that on October 23, 2009, Ms. Ehlers was moving boxes, and Ms. Brannen grabbed Ms. Ehlers' arm to stop her because she was putting the boxes in the wrong place. The other allegation was that on November 13, 2009, Ms. Ehlers was seated at her work station, and Ms. Brannen put

her hands on Ms. Ehlers' shoulders and shook her while scolding her for writing something the wrong way. Respondent's explanation for not bringing up these allegations until five to six months after they occurred was that she did not realize they were batteries. No credible evidence was presented to establish that these incidents actually occurred, and Ms. Brannen denied them. There were no witnesses, even though both allegedly occurred at the workplace where others routinely were present.

Outcome of Hostile Work Environment Complaint

79. By letter dated April 26, 2010, Mr. Sprinkle transmitted to Mr. Lempe a big notebook organized with the information he had gathered in conducting the Hostile Work Environment Complaint investigation. Included were transcripts of Respondent's and Ms. Brannen's interviews, summaries of the 35 other interviews conducted, and additional material.

80. Mr. Lempe reviewed in-depth the notebook of materials provided by Mr. Sprinkle. Mr. Lempe also followed up on issues identified in the materials, speaking again with several of the persons who had been interviewed to get more information. He also reviewed additional records, creating a notebook of his own.

81. Mr. Lempe's conclusions on the Hostile Work Environment investigation were set forth in a memorandum dated May 6, 2010, and sent to Respondent. Mr. Lempe determined that

there were two main themes evident from the investigation: first, that Ms. Brannen has high expectations of herself and those who work for her, is very precise and, generally, is a very intense manager; and second, that it was Respondent's behavior, not Ms. Brannen's behavior, that created an environment of fear and intimidation in the IT department, both with co-employees and with supervisors. Mr. Lempe concluded that a hostile work environment was shown to exist, but that contrary to Respondent's complaint, Respondent was the root cause of that environment, not Ms. Brannen.

82. Mr. Lempe's conclusion was supported by the greater weight of the more credible evidence at the final hearing. As already noted, Respondent went out of her way to complain and make negative comments about Ms. Brannen to her co-workers and others. Her co-workers in the IT department, in particular, were subjected to interruptions during the workday and were bothered by this constant diatribe.

83. Numerous employees testified to Respondent's bizarre behavior during the time she was in the state reports coordinator position. For instance, Respondent would enter a room, but not join a conversation. Instead, she would peer over the cubicles to eavesdrop on others' conversations. Respondent was famous for giving dirty looks to her co-workers--she would stare at them, scowl, glare, and smirk. Respondent also

followed employees around, tracking them when they would leave their desks with no work-related reason for doing so. When employees sat outside on a break, Respondent stared at them through windows from inside the building. Outside the building, Respondent would drive her vehicle slowly by employees, staring at them to the point of making them feel uncomfortable.

84. Perhaps one explanation for Respondent's stalking-type behavior was that she was looking for ammunition to complain about her co-workers. Respondent constantly complained about others allegedly engaging in various improprieties, including lying on their time cards, taking too-long lunches and breaks, and improperly talking about Respondent's Hostile Work Environment Complaint investigation. Respondent must have spent a tremendous amount of her work days focusing on the activities of her co-workers. Additional resources were spent by Ms. Collesano or Ms. Brannen, taking the time to promptly investigate each of Respondent's complaints about her co-workers. Then Respondent would complain because the investigated co-workers learned that Respondent had complained about them.

85. In addition to Respondent's stalking-type behavior, Respondent disrupted the workplace by slamming doors and yelling frequently, and exhibiting displays of anger that were upsetting to other workers. She started petty fights over mundane things

like pastries and recipes. More seriously, she made threatening comments that made her fellow co-workers uneasy. A number of these IT employees testified that they feared for their own safety because of Respondent's threats. Whether or not Respondent was actually dangerous or would ever carry out her threats, Respondent's threats were perceived to be serious and were very troubling to those hearing them.

86. Respondent's threatening comments were also a matter of great concern to her own union and were among the reasons given for the union's recent termination of Respondent's membership. Dee White, Respondent's former union representative, testified that one of Respondent's co-workers and fellow union members called to express a concern that Respondent might become violent.

87. The union president, Patricia Gardner, whom Respondent called to testify on her own behalf, identified three reasons standing behind the union's decision to terminate Respondent's membership. One reason was that in one of Respondent's many emails complaining about Ms. Brannen, Respondent falsely stated that Ms. Gardner had made negative comments to Respondent about Ms. Brannen. Ms. Gardner never made any such comments. A second reason was described as follows by Ms. Gardner:

[T]he main thing that started it [discussion of terminating Respondent's membership] and was taken to my board where they discussed

it and brought Ms. Ehlers in was her going to a representative at the Landings to pick up a T-shirt. And in the conversation, which was very one-sided, saying Barbara Brannen needs to die, which was very upsetting to her and upsetting to my board.

Ms. Gardner explained that Respondent was called in to give her side of the story to the board. She denied saying to a union representative that Ms. Brannen needs to die, but the board believed she did say it. The board asked Ms. Gardner to speak to Respondent, and so the two of them had a discussion.

Ms. Gardner described how she told Respondent to stop talking about Ms. Brannen: "Don't say those things. They're inappropriate. You can get in a lot of trouble for saying that sort of stuff. Just stop." Ms. Gardner described Ms. Ehler's response in which she said, "Oh, okay," she would stop.

88. But shortly after that conversation, the April 13, 2010, Weingarten meeting, occurred. Respondent's behavior at that meeting was the final straw for the union, and Respondent's membership was terminated.

89. A few witnesses testified in support of Respondent on the subject of whether they were aware of her threats or were afraid of her. A few male witnesses of not-so-small-stature testified that they were not "personally" fearful of Respondent. But one of these witnesses equivocated:

Q: Have you ever had any reason to be fearful around Ms. Ehlers?

A: Physically fearful?

Q: In any way, really.

A: Well, I guess we got to define fearful. I mean, afraid for my life or something?

Q: Right, right.

A: In that case, no.

Q: Afraid any other way?

A: Well, she's unpredictable.

In addition, one female witness who had only known Respondent since arriving at the IT department in July 2009, testified that she did not understand why others disliked Respondent.⁶ This testimony was insufficient to detract from the more credible and substantial testimony that many others had a reasonable basis to be bothered and uncomfortable, at best, and fearful for their own safety, at worst, because of Respondent's behavior.

90. Respondent attempted to prove, as in her Hostile Work Environment Complaint, that the real culprit was Ms. Brannen. Respondent presented the testimony of several witnesses, some long retired and some long moved away from the IT department and the green awning building, to attest to the difficulty of working for Ms. Brannen.

91. As previously found, there is no doubt that Ms. Brannen can be difficult to work for if the employee does not measure up to her demanding high standards. There was some evidence that in the past, Ms. Brannen's management style may

have been overly harsh at times. But the evidence also established that corrective steps were taken. Specifically, since Ms. Collesano became IT department director in August 2007, she has mentored Ms. Brannen. Ms. Collesano also sent Ms. Brannen to the Academy of Leadership Excellence for a program specifically designed to improve managerial skills. Since that time, there has been marked improvement in Ms. Brannen's management style, as attested to by those with knowledge, who maintain a current working relationship with Ms. Brannen (as opposed to those who retired or moved on long ago).

92. The greater weight of the more credible evidence establishes that Ms. Brannen did not create a hostile work environment while Respondent was working under Ms. Brannen's direct supervision. Ms. Brannen created a demanding work environment where high standards were expected. Indeed, the mediation agreement between Respondent and Ms. Brannen, which was developed with the help of Mr. Berger, recognizes the appropriateness of Ms. Brannen's high expectations and confirms the reasonableness of her requiring accuracy in the highly detailed work she supervises.

93. Respondent also claimed that Mr. Lempe's hostile work environment conclusion was improperly based on his review of court records, including numerous injunction petitions filed by

Respondent or against Respondent, and court orders in those proceedings. Mr. Lempe testified that he did not rely on those filings for the truth of the matters asserted. The material that was unrelated to Respondent's unsuccessful filings against Ms. Brannen discussed above arguably could have been excluded from the record pursuant to Subsection 120.57(1)(d), Florida Statutes, but no objection on that basis was made. Instead, Respondent stipulated to their admission into evidence. Regardless, those documents do not add anything to the testimony and the competent substantial evidence of record and have not been used as the basis for any findings of fact herein.

Context of Respondent's Work History

94. As noted in recommending termination of Respondent's employment, the specific incidents on which the Superintendent based her recommendation all stemmed from Respondent's behavior and actions in 2009-2010. But the Superintendent also reasonably considered the recent events in the context of Respondent's work history with the School Board. Consideration of that history adds more credence and support to the concerns with Respondent's recent actions. The patterns of inappropriate behavior and serial insubordination have long been present; they have just been carried to the extreme, over the top, by recent events.

95. Loretta Brustlin was Respondent's first supervisor. In 1996, Ms. Brustlin gave Respondent a negative performance evaluation, noting that Respondent "did not work well with employees" and was "very defensive and easily upset." Ms. Brustlin stated that "there have been a number of situations which have resulted in direct confrontation with other employees and administration."

96. Respondent wrote a rebuttal to the evaluation, stating that she had been "verbally abused, intimidated, humiliated, and belittled." She claimed that "certain co-workers have harassed me and tried to make me as miserable as they can. They don't behave professionally and lack in common courtesy." She claimed that co-workers were "mean, nasty, and won't answer when I asked a work related question." She ended her rebuttal with this:

With the turbulent work environment, certain co-workers hiding my listings, and trying to get me upset or in trouble, its [sic] not surprising that I have been defensive. I have been visibly shaken on many occasions [sic] due to the treatment I have received.

97. Respondent also filed complaints against Ms. Brustlin, including one complaint alleging that Ms. Brustlin had battered Respondent. Just as in Respondent's injunction petition and police reports against Ms. Brannon, Respondent claimed that Ms. Brustlin grabbed her by her shoulders and shook her; Ms. Brustlin denied doing so.

98. Respondent also filed complaints in 2002 against her next supervisor, Brad Schuette. These complaints were filed after Mr. Schuette issued two consecutive Memoranda of Instruction in 2001 regarding Respondent's disrespectful, unprofessional, argumentative, and condescending behavior. One of Respondent's complaints claimed that Mr. Schuette discriminated on the basis of religion and sex. She accused Mr. Schuette of yelling and screaming at her and being unprofessional. In an appeal of the denial of that complaint, Respondent claimed that Mr. Schuette "lied to protect himself" and was "definitely guilty of harassment." She complained about his lack of skills as a manager, defensively stating that Respondent was "not a child."

99. Mr. Schuette gave Respondent a negative performance evaluation in August 2002, in which he rated Respondent as "not effective" in areas such as cooperation, acceptance of constructive criticism, initiative, and quality of work. Once again, Respondent wrote a rebuttal, stating as follows:

Since I first began my employment [in November 1991], it has been evident to me that there have been extreme personnel problems. On numerous occasions, I have been verbally abused, intimidated, humiliated, and belittled. I have been visibly shaken on many occasions due to the treatment I receive [sic]. Now I have been harassed by you . . . I hear complaints daily about the administration in this department. . . .

100. In contrast to this grim report of constant problems with colleagues and supervisors, when Respondent was showering Mr. Lempe with emails to complain about how horrible it was to work for Ms. Brannon, she painted a very different picture of her prior experiences at the School Board. On October 22, 2009, for example, she complained that "Barbara just came and lectured me . . . I have never been treated like this in any position [sic] I have ever worked in. People have always worked as a team." Similarly, at the final hearing, Respondent testified that she has enjoyed most of her years with the School Board.

101. Respondent testified that her best years working for the School Board were when she was supervised by Bob Darois--so good that she never filed a complaint against him. But by her own admission, Respondent hardly worked during those years: "[W]hat I want to say is for five years not only myself, but three other programmers sat there with next to nothing to do. We just fiddled [sic] our thumbs."

102. Mr. Darois, who retired in June 2009, testified at the final hearing. He was very low-key and mild in demeanor. Yet, even Mr. Darois made negative comments in his mild way, in his 2008 evaluation of Respondent, which he confirmed at the final hearing. In 2008, he said that Respondent "[n]eeds to work on interpersonal [sic] skills" and be "more tactful in dealing with peers." He noted that "[w]e must all work together

and be part of a team." At hearing, Mr. Darois explained that he made these comments because Respondent had "issues" with other programmers. Mr. Darois also commented in the 2008 evaluation that Respondent "should be more open-minded regarding constructive criticism." At hearing, he explained that Respondent would react to criticism by comparing herself to others: "You know, so and so didn't do this; why should I?"

103. Respondent's most recent experience with a new authority figure showed a continuation of her behavior patterns. Even though Respondent was initially pleased with Mr. Lempe's attention to her complaints, Respondent ultimately complained about Mr. Lempe, too, right after receiving his determination on the Hostile Work Environment Complaint investigation. Respondent sent an email to the Superintendent and others claiming that Mr. Lempe had "harassed and intimidated" Emily Gilmore and that he had committed a felony by unlawfully imprisoning Ms. Gilmore. Respondent made this claim even though she was not present and did not witness any such conduct, and Ms. Gilmore never stated that Mr. Lempe unlawfully imprisoned her or committed a felony.⁷

104. Considering Respondent's work history as a whole, the greater weight of credible evidence establishes that Respondent has never tolerated supervisory authority well. Under the guise of demanding respect and professionalism, Respondent was really

demanding that she be left alone to perform her job as she saw fit, without questioning methods or results and without criticism. Whenever a supervisor has corrected or criticized Respondent, that supervisor has quickly become the subject of one of Respondent's many complaints. Respondent has a pattern of being derisive and disrespectful to her supervisors and blaming them for her own insubordination.

105. Respondent has a consistent pattern of blaming her own shortcomings on others and has been repeatedly characterized, with good cause, as very defensive and easily upset over her years employed at the School Board. Her behavior is volatile and unstable and is highly disruptive to the work place. With a few isolated exceptions, she does not get along with others and is not a team player. Indeed, she goes out of her way to make the work lives of many of her co-workers miserable.

CONCLUSIONS OF LAW

106. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2010).

107. In this proceeding, Petitioner seeks to terminate Respondent's employment. Petitioner bears the burden of proof, and the standard of proof is by a preponderance of the evidence. McNeill v. Pinellas County School Board, 678 So. 2d 476, 477

(Fla. 2d DCA 1996); Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990).

108. The Superintendent has the authority to recommend termination of School Board personnel, such as Respondent, to the School Board. § 1012.27(5), Fla. Stat.

109. Pursuant to Section 1012.40, Florida Statutes, Respondent is an "educational support employee," who may be terminated by the School Board pursuant to standards provided in the CBA.

110. The applicable CBA establishes "just cause" as the relevant standard for termination. The CBA does not define "just cause," but Subsection 1012.33(1)(a), Florida Statutes, which adopts "just cause" as the statutory standard for termination of instructional employees, provides guidance. The statute sets forth a non-exclusive list of factors that may constitute "just cause," including (but not limited to) "immorality, misconduct in office, incompetence, gross insubordination, [and] willful neglect of duty" In addition, case law establishes that "[j]ust cause for discipline is a reason which is rationally and logically related to an employee's conduct in the performance of the employee's job duties and which is concerned with inefficiency, delinquency, poor leadership, lack of role modeling, or misconduct."

Sarasota County School Board v. Berry, Case No. 09-3557 (DOAH Jan. 27, 2010).

111. Florida Administrative Code Rule 6B-4.009 defines several of the "just cause" factors listed in Subsection 1012.33(1)(a), Florida Statutes, for purposes of disciplinary action against instructional personnel. Insofar as pertinent here, paragraph (3) defines "misconduct in office" as a violation of the Code of Ethics of the Education Profession as adopted in Florida Administrative Code Rule 6B-1.001 and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Florida Administrative Code Rule 6B-1.006, which is so serious as to impair the individual's effectiveness in the school system. The same rule defines "gross insubordination" as "a constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority." Fla. Admin. Code R. 6B-4.009(4).

112. The Superintendent's letter of June 2, 2010, charged Respondent with multiple instances of insubordination and with multiple violations of the Code of Professional Conduct. The Code of Professional Conduct, applicable to non-instructional employees like Respondent, is part of the CBA, set forth in Appendix L. The Code of Professional Conduct provides in pertinent part:

The following shall constitute the principles of professional conduct and ethics for the non-instructional support staff employed by the School Board of Sarasota County. Violation of any of these principles may subject the individual to discipline as described elsewhere in this agreement.

* * *

Shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education, or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; . . .

Aware of the importance of maintaining the respect and confidence of one's peers, of students, of parents, and of other members of the community, the employee will strive to achieve and sustain the highest degree of ethical conduct.

113. These same principles are codified in Florida Administrative Code Rule 6B-1.006(5)(d), as part of the Principles of Professional Conduct for the Education Profession in Florida and in Florida Administrative Code Rule 6B-1.001(3), as part of the Code of Ethics of the Education Profession in Florida, respectively. Thus, the School Board, through its CBA, applies the same principles and code of ethics provisions to govern the conduct of instructional and non-instructional employees alike.

114. The School Board has met its burden of proving, by the greater weight of the competent, substantial, and more credible evidence, that Respondent flagrantly violated the above-quoted standards and principles throughout her employment history with the School Board, but most notably since June 2009.

115. Respondent's conduct detailed in the Findings of Fact created a hostile work environment that was intimidating and oppressive to many of her co-workers and supervisors. Her improper behavior was persistent and intolerable, most dramatically so since June 2009. Rather than establishing as the required cornerstone of her behavior the sort of ethical conduct that maintains the respect and confidence of her peers, Respondent's behavior was destructive and disrespectful. Respondent's violations of the Code of Professional Conduct standards were plainly so serious, in totality, as to be a complete roadblock to Respondent's ability to be effective in the school system.

116. In addition, the School Board met its burden of proving, by the greater weight of the competent, substantial, and more credible evidence, that Respondent was guilty of "gross insubordination." Respondent's persistent and increasing resort to disrespect and derision toward her supervisors, particularly in 2009 and 2010, is flagrant and intolerable. Respondent's conduct is the sort of persistent, sustained, and unreasonable

course of defiance over time, with a "disaffected attitude toward authority," that justifies termination for gross insubordination. See Steele v. District School Board of Hendry County, Case No. 78-052 (DOAH Sept. 14, 1979).

117. Respondent's actions were sufficiently egregious to warrant termination of her employment, without requiring more progressive disciplinary steps first. See Sarasota County School Board v. Berry, Case No. 09-3557 (DOAH Jan. 27, 2010) (Teacher's threat of violence was a flagrant violation within the meaning of the CBA, justifying termination without resort to progressive discipline; multiple other violations constituted misconduct which are further grounds for termination); Lee County School Board v. Bergstresser, Case No. 09-2414 (DOAH Sept. 25, 2009) (Respondent's refusal to do assigned tasks, harassment of co-workers, and threats of violence constituted just cause for immediate termination, as gross insubordination and misconduct); Seminole County School Board v. Hernandez, Case No. 06-1039 (DOAH Nov. 16, 2007) (creation of hostile work environment by using racial slurs provided "just cause" to terminate Respondent's employment); St. Lucie County School Board v. Knight, Case No. 99-4481 (DOAH Aug. 18, 2000) (finding teacher's violation of the same provisions of the Code of Ethics and Principles of Professional Conduct relied on in this case

constituted just cause for termination, despite teacher's claim that principal was harassing teacher).

118. Respondent argues that some of her conduct, even though in violation of the governing standards, may not lawfully be considered if the conduct occurred beyond the bounds of the physical work site. No authority was presented to support this proposition. The CBA provides only that "an employee's off the job conduct shall not result in disciplinary action, unless such conduct impairs his/her effectiveness as an employee." Thus, if the conduct can be tied to the employee's on-the-job effectiveness, as Respondent's conduct surely was, then such conduct may lawfully be considered in a disciplinary context. Harassment and threats directed to one's co-workers and supervisors are no less intolerable because they are made from one's cell phone or home computer. Communication about the workplace that conveys disrespect and derision toward authority figures is no less disrespectful when made from a remote location. Respondent's conduct detailed above cannot be excused or ignored to the extent some of that conduct may have occurred or originated outside the physical boundaries of the workplace.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Petitioner, Sarasota County School Board, enter a final order terminating Respondent, Karin Ehlers's, employment.

DONE AND ENTERED this 10th day of November, 2010, in Tallahassee, Leon County, Florida.



ELIZABETH W. MCARTHUR
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of November, 2010.

ENDNOTES

^{1/} Ms. Collesano changed her name during the relevant time period of this matter. Her name used to be Leona Campos. For consistency, she will be referred to throughout this Recommended Order as Ms. Collesano.

^{2/} Unless otherwise indicated, all references to the Florida Statutes are to the 2009 version.

^{3/} In contrast, the record reflects that Respondent got along well with Ms. Collesano for the first year after Ms. Collesano took the position of IT department director in August 2007. For example, in July 2008, Ms. Collesano enrolled Ms. Ehlers in an Effective Writing Course, and after the course, Ms. Ehlers sent Ms. Collesano a note thanking her profusely for enrolling her in the course and commenting that Doug Berger, who taught the course, was an effective communicator and great instructor. But after that point, Ms. Ehlers became more demanding, asking for

more and more training courses to be provided during her work time so that she could become qualified for other positions since "we all know Cobol programmers are going away."

Ms. Collesano responded to these numerous requests by pointing out the many available sources for training that could be pursued if someone had the interest, including the Internet, Microsoft free online tutorials, libraries, and professional development classes. Ms. Collesano told Respondent that she would only be able to approve training during work time for skills that were necessary for Respondent's current position.

^{4/} Scott Lempe joined the District in 2003, initially as director of Human Resources, followed quickly by promotions to executive director of Human Resources, then associate superintendent for Business, and finally chief operating officer. Mr. Lempe is a retired lieutenant colonel, having spent 26 years in the military. His duty assignment before retiring from the military was as General Tommy Franks', chief of Personnel Programs at Central Command. In that position, Mr. Lempe was responsible for all Central Command personnel issues in the 25 countries assigned to Central Command. Mr. Lempe's substantial personnel management experience is noted.

^{5/} Respondent's Proposed Recommended Order attempted to portray the investigation as misleading and skewed. However, Respondent mischaracterized the testimony to suggest the following proposed finding: "Many [of the 'approximately six' witnesses testifying about the investigation in support of Ms. Ehlers] stated they did not believe concerns about Ms. Brannen that they voiced were included in their interview notes for the hostile work environment report." No record citations are provided for this proposed finding, and none could be provided. No witness--not a single one--testified to any material omission in the interview summaries. Instead, here is what Respondent's witnesses actually said about their interview summaries: Oscar Saliba reviewed the summary of his interview, and did not believe anything of note was left out; Mary McCurry confirmed that her interview summary was a fair representation, and there was nothing missing; Loretta Brustlin did not ever review the summary of her interview, and did not really want to; Janet Meinhart noted only that her interview summary was only two pages, but other than thinking she used the word "controlling," instead of "demanding," when describing Ms. Brannen, she could not identify anything substantive that was left out; and Emily Gilmore testified only that her interview summary omitted her discussion with Mr. Sprinkle about the investigation process

itself, not about Ms. Brannen. Ms. Gilmore was under the impression that other employees had discussed the interview questions, although she admitted she did not actually hear them say so, and just assumed that was what they were talking about because they would get quiet when she approached.

^{6/} Ms. Gilmore, who was Ms. Collesano's assistant until Ms. Gilmore was bumped by a more senior employee in the 2010 staffing process, developed many misimpressions during the short time she knew Respondent. Most of the information she relied on was told to her by Respondent, and some of the information was plainly wrong. For example, Ms. Gilmore was under the misimpression that Ms. Collesano improperly asked her to copy Respondent's personnel file so that Ms. Gilmore would read that file and turn against Respondent, even though Ms. Collesano needed the file material for use in one of the Weingarten meetings and, naturally, asked her assistant to make the copies. Ms. Gilmore also was convinced that she was bumped in the 2010 staffing process because she was a witness in support of Respondent. In fact, Respondent's other friend in the IT department, Oscar Saliba, somehow had the same misimpression. He explained the reason they thought Ms. Gilmore was displaced as retaliation was because they were under the misimpression that Ms. Gilmore was a "confidential" employee who was exempt from the bumping process. Mr. Lempe confirmed that Ms. Gilmore was not a "confidential" employee and was subject to the same mechanical displacement process that allowed Ms. Ehlers to bump Ms. Clark out of the state reports coordinator position in the prior year's staffing process.

^{7/} Mr. Lempe asked Ms. Gilmore to meet with him and Ms. Collesano so he could follow up on an issue she addressed in her interview with Mr. Sprinkle regarding Respondent's time cards and "blue sheet" leave requests. Mr. Lempe had questions about whether Respondent was being treated the same as other employees, because Respondent had raised that concern. But Ms. Gilmore got very upset that Mr. Lempe had read her interview summary and was asking her questions about it based on her misunderstanding of the process. She stood up to leave, saying she wanted a union representative. Mr. Lempe put his hand across the doorway and started to explain to her the nature of the meeting and whether she had a right to representation, but Ms. Gilmore cut him off and told him to move his hand. He did so and she left. She was neither detained nor harassed, except in Ms. Gilmore's own mind. Mr. Lempe was actually trying to give Respondent the benefit of the doubt on her claim that she

was being treated differently regarding time cards and leave slips.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.